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THE ENGLISH STATUTES OF 1895.

FIFTY statutes are contained in five very thin numbers of the Law Reports for 1895, but most of them are so special that it is difficult to find any at all likely to interest the readers of this Review. An inexorable mandate has however been issued, and the attempt must be made.

The first statute requiring notice is the Shop Hours Act, 1895 (58 Vict. c. 5). The Shop Hours Act, 1892 (55 & 56 Vict. c. 62), § 3, forbade the employment of a young person in a shop for more than seventy-four hours a week, and § 5 imposed a fine for any employment contrary to the Act. § 4 provided that a notice should be kept exhibited by the employer in a conspicuous place referring to the provisions of the Act, and stating the number of hours in the week during which a young person might lawfully be employed, but imposed no penalty for the omission to affix such notice. § 7 provided that all offences under the Act should be prosecuted and all fines recovered in like manner as offences and fines were prosecuted and recovered under the Factory and Workshop Act, 1878; *i. e.*, on summary conviction before a court of summary jurisdiction in manner provided by the summary Jurisdiction Acts. In Hammond *v.* Pulsford[1] an attempt to enforce § 4 by means of the penalty under § 5, in a case where the actual employment was under seventy-four hours, not unnaturally failed. It was hinted by counsel, and apparently the proposition was adopted by the cur-

[1] 1895 1 Q. B. 223.

rent legal papers and by the legislature, that there was no means of punishing a breach of § 4, that there was a slip in the Act, and a wrong without a remedy. The Shop Hours Act, 1895, was therefore passed with a view to remedy this defect, and a fine of forty shillings is imposed if the notice is not exhibited. Assuming, as one is almost bound to do, that the general view is correct, and that there was a *casus omissus* in tbe former Act, the point arises whether there is not a far larger defect in the general law of England, or at all events in that part of it which is administered by courts of summary jurisdiction. A statute orders a definite act to be done, which act concerns a certain part of the public. That act is disobeyed. Stephen's Digest of Criminal Law, Art. 134, states that " Every one commits a misdemeanor who wilfully disobeys any statute of the realm by doing any act which it forbids, or by omitting to do any act which it requires to be done, and which concerns the public or any part of the public, unless it appears from the statute that it was the intention of the legislature to provide some other penalty for such disobedience." No penalty being provided, the offender could, it would seem, be indicted for misdemeanor; and, by Art. 23, " Every person convicted of a misdemeanor for which no special punishment is provided by law is liable to fine and imprisonment without hard labor (both or either), and to be put under recognizances to keep the peace and be of good behaviour at the discretion of the court." The statute, however, unfortunately relegates the offender to a court of summary jurisdiction. This appears to have the curious effect of enabling it to be disobeyed with impunity. It certainly would be more consistent to give a general power to courts of summary jurisdiction to fine and imprison to a definite limited extent for offences which the legislature directs them to try without providing a special punishment.

The Army (Annual) Act, 1895 (58 Vict. c. 7), and the Appropriation Act, 1895 (58 & 59 Vict. c. 31), call for no special remark, but students of Dicey on the Law of the (English) Constitution may like to glance at Acts by which the Commons are enabled under a veiled threat of not passing them — that constitutional διπλῇ μάστιγι τὴν Ἄρης φιλεῖ — practically to give the conventions of the constitution the force of law.

The Documentary Evidence Act, 1895 (58 Vict. c. 9), adds the Board of Agriculture to the Government Departments to which the Documentary Evidence Acts apply. (See Stephen's Digest of

the Law of Evidence, Art. 83, where the three methods of proof will be found.)

The Finance Act, 1895 (58 Vict. c. 16), makes a few alterations in the Stamp Act, 1891 (54 & 55 Vict. c. 39). Under the Stamp Act, 1891, a receipt written upon a bill of exchange or promissory note duly stamped, or upon a bill drawn by any person under the authority of the Admiralty upon and payable by the Accountant General of the Navy, was not liable to duty. In future it will be so liable, except in the case of bankers writing their names on bills or notes in their ordinary course of business, or payees of drafts payable to order signing the same. If a payee wishes for any reason to indorse a bearer check, it would be as well first to make it an order check. Where property is vested by an Act of Parliament, a Queen's printer's copy is to be stamped. If purchased under a statutory power, the instrument of conveyance is to be stamped. In each case, the stamped copy Act or the instrument is to be produced to the Inland Revenue within three months after vesting or completion, with a penalty for non-compliance. It is sometimes thought that railway companies and others who purchase property which they mean to hold permanently do not always take the trouble to stamp their deeds, and unless the deed has to be produced in court the Revenue loses the duty. In future they will have to exercise greater care on this point.

The Stamp Act, 1891, made life and accident policies of insurance include the well known newspaper advertisements in that behalf. The same principle is now to be applied to insurance against sickness or incapacity from personal injury. Formerly, when three months after the first execution of any instrument had elapsed, there was no power to remit stamp penalties. This limit is now abolished. This is perfectly right, as *bona fide* mistakes may be made and not discovered within the necessary three months. The Commissioners may quite well be trusted not to exercise their powers of remission unreasonably.

The Seal Fisheries (North Pacific) Act, 1895 (58 & 59 Vict. c. 21), is probably too well known in the States to require English comment. It is one of the many Acts in favor of a close time for seals, and applies to the animal known as the "fur seal," and to any marine animal specified in that behalf by an Order in Council under the Act. Presumably this means marine animals, *ejusdem generis*, and would not extend to whales, turtles, or sea-serpents, but the language is remarkably wide.

Under the Law of Distress Amendment Act, 1895 (58 & 59 Vict. c. 24), a bailliff's certificate may be cancelled by a judge of the County Court that granted it, without the necessity of proving extortion or misconduct as heretofore. A person who distrains without a certificate incurs a penalty of £10, besides being, as before, liable for trespass, and if goods exempt from distress are seized they or their value can be summarily and quickly recovered, instead of being tardily replevied.

The Mortgagees Legal Costs Act, 1895 (58 & 59 Vict. c. 25), enables a solicitor mortgagee or transferee to charge profit costs. It was considered by the judges that, though such a solicitor mortgagee might add out of pocket costs to his security, he could not add profit costs, not because of any fiduciary relationship, but because the costs had never been incurred. The bargain was that the mortgagor might redeem on payment of principal, interest, and costs; i. e. costs incurred by the mortgagee which did not include remuneration for his own personal trouble.[1] The solicitor mortgagee could of course have employed some one else to do the work, and then the charges would have had to be paid, but if he voluntarily chose to do the work himself he was considered to do it as mortgagee, and not as mortgagee's solicitor. Rightly or wrongly, this was considered by the persons concerned as the acme of absurdity and the height of injustice, and in future the grievance will be removed. The mortgagee solicitor is to be looked upon as two persons, viz. a mortgagee and a solicitor, the former of whom can instruct the latter or his firm professionally, and the latter of whom, or his firm, can charge the usual profit costs. Without furthe detail it may be stated that the Act has removed the disabilities attaching to mortgagees from a solicitor's shoulders, leaving the rest of the community subject thereto. It seems quite clear that it has not removed the corresponding disabilities attaching to trustees; and now that a little correspondence has made this grave oversight plain to the profession, there is like to be a fresh outcry. It is so usual to have a special clause enabling solicitor trustees to charge profit costs even for work that would ordinarily be done without the intervention of a solicitor, that the chief effect of the new concession which is bound to come will simply be to save draughtsmen the trouble of inserting the clause. The clause in question often extends to all

[1] See *In re* Roberts, 43 Ch. D. 52; *In re* Doody, 1893, 1 Ch. 129, and cases therein cited.

professional men, and no doubt the legislature will take that into account, and in a future Act enable all mortgagees and trustees whatsoever to make reasonable charges for work properly undertaken by them in some other capacity than that of mortgagee or trustee. It would certainly be unfair to allow a solicitor trustee and to forbid an accountant trustee to make his usual charges.

The Market Gardeners Compensation Act, 1895 (58 & 59 Vict. c. 27), is somewhat socialistic, and very much favors market gardeners as against their landlords. The Agricultural Holdings Act, 1883 (46 & 47 Vict. c. 61), giving compensation for improvements divided improvements into three classes: 1st, Improvements to which consent of landlord is required; 2d, Improvements in respect of which notice to landlord is required; and, 3d, Improvements to which consent of landlord is not required.

Needless to say, the present Act enlarges class 3. So far as market gardens are concerned, "erection or enlargement of buildings," "making of gardens," and "planting of orchards or fruit bushes," are removed from class 1, and an enlarged list is inserted in class 3. An incoming tenant could formerly purchase the outgoing tenant's right to compensation with the landlord's consent in writing. Such consent is no longer necessary. During his tenancy the tenant may remove fruit trees or fruit bushes planted by him and not permanently set out. The above provisions apply where after the commencement of the Act, it is agreed in writing that a holding shall be let or treated as a market garden. Where a holding is, at the date of the commencement of the Act, used as a market garden with the landlord's knowledge, and the tenant has *then* executed thereon, without previous written notice of dissent by the landlord, any improvements in respect to which a right of compensation or removal is given by the Act, then the Act applies to the holding as if it had been agreed in writing after the commencement of the Act that it should be let or treated as a market garden. This seems to mean that user plus one such improvement executed before the 1st of January, 1896, brings the whole Act into operation without any consent on the landlord's part. If this is so, it is somewhat hard on the landlord, as he might have given a previous written dissent to the improvement had he known a future Act would affect him retrospectively. It would be fairer to confine the section to improvements executed after the 6th of July, 1895, when the Act was passed. Presumably, "then" means "at that date," and not "then or thereafter." In any case, however,

an improvement may quite well be made without any knowledge on the part of the landlord, and it seems strange to throw the onus of express dissent on him in such a case.

Under the False Alarms of Fire Act, 1895 (58 & 59 Vict. c. 28), the practice of ringing a street fire alarm wantonly will cost the practical joker £20. Under this statute, and two or three others of the year, the accused person and his wife are competent, but not compellable witnesses. This is a sort of tentative provision introduced into most new criminal or quasi criminal statutes, and if it is found to work well it will no doubt be made applicable to all criminal trials.

The Extradition Act, 1895 (58 & 59 Vict. 33), enables the Secretary of State to direct an extradition case to be heard elsewhere than at Bow Street in cases where the removal of the accused person is dangerous to his life or prejudicial to his health. The recent case of Dr. Herz shows the necessity of some such provision. Two more blows at the *Laissez faire* doctrine are dealt by the Fatal Accidents Inquiry (Scotland) Act, 1895 (58 & 59 Vict. c. 36), and the Factory and Workshop Act, 1895 (58 & 59 Vict. c. 37). The former provides for public inquiry in regard to fatal accidents occurring in industrial employments or occupations in Scotland. The latter amends and extends the Factory Acts. It is far too long to be dealt with here, but it may be mentioned in passing that it provides two hundred and fifty cubic feet of space for every person employed in a room, or four hundred cubic feet for over time, and if artificial light other than electric is used the Secretary of State may increase these figures. Dangerous factories and machines may be summarily stopped till the danger is removed, and in the case of machines *ex parte interim* orders can be obtained. Wearing apparel is not to be made, cleaned, or repaired in a house where there is small-pox or scarlet-fever. Fire escapes are to be provided. Young persons are not to be employed over time under § 53 of the Act of 1878, and women may only be so employed for three (instead of five) days in any one week, or thirty (instead of forty-eight) days in any twelve months. With so much just and proper legislation in favor of workmen, one might fairly expect to find some small provision for the protection of employers, such as, for example, a provision for the more speedy and effectual suppression of the gross abuses of picketing during a strike. If picketing within a mile of the factory were forbidden, and violence put down with a firm hand at

the outset, it would scarcely ever be necessary to call out the military to shoot unoffending people a mile away from the scene. It is really doubtful, considering the excellent half-penny evening papers, that so thoroughly understand and explain the causes of and remedies for each strike as it occurs, whether picketing is even necessary at all. Be that as it may, a free radius of a mile would not hinder its *legitimate* use, and some such provision would have relieved the year's legislation from a possible charge of one-sidedness.

The Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), greatly extends the jurisdiction of the magistrates and courts of summary jurisdiction under the Matrimonial Causes Act, 1878 (41 & 42 Vict. c. 19), and the Married Women (Maintenance in Case of Desertion) Act, 1886 (49 & 50 Vict. c. 52), the latter of which it repeals. The former Act gave the court power, where a husband was convicted of aggravated assault, and the court was satisfied that the future safety of the wife was in peril, to release her from cohabitation, order maintenance, and give her the custody of the children up to the age of ten. The Act of 1886 gave power to order maintenance in case of desertion, but, except by a meaningless marginal note, did not deal with the custody of children.

The present statute provides a remedy for any married woman who has not committed an act of adultery uncondoned, unconnived at, or unconduced by her husband, and whose husband is convicted of an aggravated assault on her, or convicted of assault on her and fined more than £5 or imprisoned over two months, or deserts her or is guilty of such persistent cruelty, or wilful neglect to maintain her, as to cause her to live apart. In such a case, she may obtain an order tantamount to a decree of judicial separation on the ground of cruelty, custody of the children to the age of sixteen, maintenance, and costs. The order will be discharged if the wife resumes cohabitation or commits adultery. By this provision, a certain *prima facie* danger of immorality arising from the statute is avoided. The statute is considered highly beneficial to the poorer classes, and probably its scope will sooner or later be extended to those matrimonial remedies which can at present only be obtained by those able to afford the luxury of an application to the High Court of Justice.

The next statute is the bar sinister of the year's legislation, being in effect a re-enactment of the ninth clause of the Decalogue.

It is a painful fact that, at the close of the nineteenth century, an English Parliament has found it necessary to pass a statute to prevent Englishmen making or publishing false statements of fact in relation to the personal character or conduct of Parliamentary candidates, without on reasonable grounds believing such statements to be true. By the Corrupt and Illegal Practices Prevention Act, 1895 (58 & 59 Vict. c. 40), this offence is made an illegal practice within the Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), and a person found guilty is, on summary conviction, liable to a fine not exceeding £100, and for five years can neither be registered nor vote in the place where the offence is committed. Candidates found guilty on election petition are subject to further disqualifications. Injunctions may be granted. A candidate is not liable for statements unauthorized by himself or his election agent, unless his election was procured or materially assisted thereby. In the latter case, presumably, the candidate would merely lose his seat for that Parliament. It is to be hoped that this statute may soon become a dead letter for want of offenders, and that a future Parliament may feel themselves justified in repealing it.

The Naturalization Act, 1895 (58 & 59 Vict. c. 43), adds certain words to § 10, subs. 5, of the Naturalization Act, 1870 (33 & 34 Vict. c. 14), which will now read as follows, the additional words being printed in Italics: "Where the father, or the mother being a widow, has a certificate of naturalization in the United Kingdom, every child of such father or mother who during infancy has become resident with such father or mother in any part of the United Kingdom, *or with such father while in the service of the Crown out of the United Kingdom*, shall be deemed to be a naturalized British subject." The statute is properly made retrospective in its operation. The alteration speaks for itself.

With this statute a somewhat lengthy, and perhaps unavoidably dry, paper must conclude. The compression of statutes is such a dangerous task, that it is rash to hope all inaccuracy has been avoided. It is rumored, however, that Harvard students are trained from the outset of their course to look with distrust on anything but the *ipsissima verba* of the actual statute. Mistakes may amuse, but cannot mislead, such true worshippers at the shrine of their goddess, Law.

G. Rowland Alston.